APPENDIX

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 00-CV—1392-TPJ

HIWOT NEMARIAM, et al., on behalf of themselves and all others similarly situated,

Plaintiffs,

- against -

THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA

and

THE COMMERCIAL BANK OF ETHIOPIA

Defendants.

DECLARATION OF O. THOMAS JOHNSON, JR.

O. Thomas Johnson, Jr. declares pursuant to 28 U.S.C. § 1746:

1. My full, true and correct name is Oliver Thomas Johnson, Jr. I am a citizen of the United States of America and an attorney admitted to practice law in the State of California and the District of Columbia.

2. I make this declaration at the request of counsel for Plaintiffs in the above-captioned case. I have been asked to provide facts within my personal knowledge regarding the Claims Commission established by Ethiopia and Eritrea through their December 12, 2000, Peace Agreement.

3. I am currently a member of the law firm of Covington & Burling in the District of Columbia, where I specialize in international litigation and arbitration.

Covington & Burling's Role with the Claims Commission

4. Since September 2000, I have been retained by Eritrea to act as their legal counsel in specific matters concerning the Boundary Commission created by Ethiopia and Eritrea as part of the Peace Agreement.

5. I also have played a very circumscribed role in advising Eritrea on the Claims Commission created by the Peace Agreement. My only work in this regard thus far has been to review documents drafted by Lea Brilmayer, Legal Advisor to the Office of the President, to assist Eritrea in locating, and acting as an intermediary with, potential expert witnesses, and to appear at hearings.

6. Covington & Burling currently plays and will continue to play a circumscribed role in the Claims Commissions process. At present, we expect that we will not draft any documents, nor will we participate in fact-gathering, investigation or preparation of the thousands of claims that Eritrea will submit to the Commission. We expect our role

will be limited to arguing procedural issues in the July 1-3 hearings and possible argument in later hearings.

7. I am the only partner at Covington & Burling who has assisted Eritrea with Claims Commission issues. I estimate that I have billed less than fifty hours to this case. Except for approximately five hours of work performed by one associate, I have not assigned any work related to the Claims Commission to any associates, nor do I expect to assign any other attorneys to the case in the future.

8. I have spent approximately fifteen hours in hearings concerning the Claims Commission. However, I have never flown to The Hague or to other locations specifically to appear at such hearings; I have always traveled to the relevant location for other business meetings that were timed to coincide with Claims Commission hearings.

Negotiation of the Claims Commission

9. I attended one round of negotiations on behalf of Eritrea relating to the drafting of the Peace Agreement. I was not Eritrea's point person for negotiation of the Peace Agreement; however, based on the negotiations that I attended and on subsequent discussions, I understand that the Claims Commission is meant to be a claims forum that may run parallel to any proceedings already filed in other fora.

10. In October or November 2000, I discussed with Lea Brilmayer and Kathleen Wilson, from the U.S. Department of State, Eritrea's position that pre-existing lawsuits

should be able to proceed parallel to the Claims Commission. Based on these discussions, I understood that Eritrea's position on this issue was motivated by Eritrea's desire not to interfere with the *Hiwot Nemariam, et al. v. Ethiopia and the Commercial Bank of Ethiopia* case in the United States. Following these discussions, the State Department produced a draft of the Peace Agreement that reflected Eritrea's position. The substance of the provision that appeared in the State Department draft is in the Peace Agreement as signed by the parties.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: June 7, 2001
Washington, D.C.

/s/
O. Thomas Johnson, Jr.
Covington & Burling

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DECLARATION OF LEA BRILMAYER

Lea Brilmayer declares pursuant to 28 U.S.C. §1746:

1. My full, true and correct name is Roberta Marie ("Lea") Brilmayer. I am a citizen of the United States of America and an attorney admitted to practice law in the State of Texas and before the United States Supreme Court.

2. I make this declaration at the request of counsel for Plaintiffs. I have been asked to provide facts within my personal knowledge regarding the Claims Commission established by Ethiopia and Eritrea.

3. I graduated from the Boalt Hall School of Law at the University of California at Berkeley with a Juris Doctor degree in 1976, and I received an LL.M. from Columbia Law School in 1978.

4. Between 1976 and 1982, I taught at the Columbia Law School, the University of Texas Law School, and the University of Chicago Law School. From 1982 to 1991, I was a Professor at the Yale Law School. From 1991 to 1997, I was a Professor at New York University Law School. In 1998, I returned to the Yale Law School as the Howard M. Holtzmann Professor of International Law.

5. Since January 2000, I have advised the Office of the President of the State of Eritrea. From 1993 through January 2000, I acted as the Co-Agent for the Government of Eritrea for the Eritrea-Yemen Arbitration (territorial and maritime phases), which was held under the auspices of the Permanent Court of Arbitration at the Peace Palace, The Hague, Netherlands.

6. In my official capacity as Legal Advisor, I was involved in the negotiations of the December 12, 2000, Comprehensive Peace Agreement ("Agreement") between Ethiopia and Eritrea. I attended negotiating sessions as a representative of Eritrea and advised the government

generally, outside the negotiating sessions, about negotiating proposals that had been put forth.

7. The official negotiations over the Agreement commenced within two weeks of the signing of the Cessation of Hostilities Agreement between Ethiopia and Eritrea in June 2000. However, negotiations over the Claims Commission or a similar body had occurred sporadically throughout the conflict between Ethiopia and Eritrea.

Peace Agreement Negotiations and Interpretation

8. During the negotiations over the Agreement and the Claims Commission, both Ethiopia and Eritrea were fully aware that the case of *Hiwot Nemariam, et al. v. The Federal Democratic Republic of Ethiopia and the Commercial Bank of Ethiopia* had been filed in the District Court of the District of Columbia.

9. During the negotiations, it was Eritrea's position that the Claims Commission should not interfere with proceedings in the *Hiwot Nemariam* case. Before the signing of the agreement on December 12, 2001, Ethiopia's agreement to this position was obtained. Ethiopia's acceptance of Eritrea's position on this issue was incorporated as Article 5, Paragraph 8 of the Agreement, which states, "Except for claims . . . filed in another forum prior to [December 12, 2000], the Commission shall be the sole forum for adjudicating claims described in paragraph 1 or filed under paragraph 9 of this article[.]"

10. Eritrea expressly requested that this language be included in the Agreement to prevent the existence of the Claims Commission from affecting the *Hiwot Nemariam* case. This provision was added after I personally informed a State Department negotiator at a meeting in Asmara, Eritrea, in late November 2000 that Eritrea could not sign an agreement that would potentially adversely affect the rights of persons of Eritrean national origin in an on-going case. It was my strongly held view (on consultation with my supervisors in the Office of the President) that the plaintiffs in the *Hiwot Nemariam* case should not be required to relinquish their legal rights in an ongoing case as a condition of Eritrea obtaining a peace settlement and boundary demarcation with Ethiopia. Upon my insistence, the State Department negotiator suggested the wording that ultimately appeared in the Agreement.

11. As this provision was based on negotiation and understanding between Eritrea and Ethiopia, it is my opinion and Eritrea's official position that Ethiopia's request for dismissal of the *Hiwot Nemariam* case on *forum non conveniens* grounds in favor of the Claims Commission is inconsistent with the agreement reached by Eritrea and Ethiopia, which is reflected in the Agreement.

Claims to be Filed by Eritrea Before the Claims Commission

12. Currently, the Claims Commission is not operating, its rules and procedures have not been finalized and no claims have been filed yet. However, Eritrea's plans for presenting claims to the Commission are as follows.

13. Eritrea is currently preparing to present approximately 150,000 claims before the Claims Commission. However, if Eritrea and Ethiopia's request to include claims of Internally Displaced Persons ("IDPs") is granted, the group of claims presented by Eritrea will increase to over one million.

14. Eritrea will present approximately ten thousand claims resulting from violations of international human rights law, including:

- Torture of civilians;
- Discrimination on the basis of ethnicity or national origin;
- Arbitrary and illegal detention of civilians.

15. Eritrea also will make over one thousand claims concerning Ethiopia's violations of the laws of armed conflict, including:

- Illegal internment of civilians in concentration camps without formal accusation or trial;
- Torture and physical maltreatment of illegally interned civilians;
- Abuse of Eritrean civilians;

- Bombing in violation of a United States brokered air moratorium;

- Deliberate targeting of civilian property and infrastructure in Asmara and Assab in shelling and bombing.

16. Eritrea will submit an unknown but very large number of claims based on violation of laws regarding military occupation, including over ten thousand claims of:

- Systematic physical and sexual abuse of civilians in occupied Eritrean territory;

- Devastation of infrastructure;

- Deliberate destruction of property.

17. Eritrea further will offer claims concerning violations of the OAU Framework Agreement and the Algiers Agreements, including:

- Death and injury to persons and livestock due to Ethiopia's refusal to comply with United Nations de-mining operations;

- Obstruction of the return of Eritrean civilians to their homes;

- The illegal continuing occupation of demilitarized zones.

18. Eritrea also will submit claims regarding violations of international customary law and treaties, including:

- Ethiopia's abduction of Eritrean consular officials engaged in the performance of consular duties on protected diplomatic property;

- Ethiopia's illegal entrance into and forcible seizure and ransacking of the Eritrean Embassy Residence in Addis Ababa;

- Ethiopia's continued physical occupation of the Residence.

19. Eritrea will make claims based on international laws of contract and property, including:

- Ethiopia's systematic suspension of payments and/ or failure to make payments in accordance with outstanding legal obligations;

- The blockage of access to the Port of Assab from both land and sea;

- The diversion of international commerce directed to Assab.

20. The types of injuries for which Eritrea will request relief before the Claims Commission include:

- Deliberate infliction of bodily injury, including mutilation of children, assault, and systematic rape

(including gang rape) in areas occupied by the Ethiopian military;

- Deaths, kidnappings, and disappearances in areas occupied by the Ethiopian military;

- Systematic separation of families, with an intent to inflict psychological harm on children and parents;

- Discrimination against persons still residing in Ethiopia by reason of their Eritrean national or ethnic origin;

- Deliberate destruction and desecration of houses of religious worship, cemeteries, and archaeological and cultural sites;

- Deliberate sabotage and destruction of infrastructure.

21. Despite the overwhelming importance and scope of the claims described above, Eritrea has also stated its intention to pursue the claims of individuals expelled and denationalized by Ethiopia, as well as claims of taking of property, requesting financial compensation and other relief.

22. The class of individuals potentially represented in the *Hiwot Nemariam* case is only a subsection of the claimants represented by Eritrea before the Claims Commission. Nevertheless, by ensuring that this significant number of similarly situated claimants have full access to justice, the *Hiwot Nemariam* case will assist Eritrea in its

Herculean task of representing its 150,000 to potentially more than one million claimants.

23. Further, as Ethiopia stated in its May 1, 2001, submission to the Claims Commission, the Agreement does not preclude a party who has submitted a claim to another forum prior to December 12, 2000, from submitting the same claim to the Commission. *See* Ethiopia's May 1, 2001, Submission to the Claims Commission at ¶ 3.16, attached hereto as Exhibit 1 ("Ethiopia's May 1 Submission"). Therefore the *Hiwot Nemariam* lawsuit does not preclude Eritrea from submitting the same claims to the Commission. As both States Parties are following the *Hiwot Nemariam* case, it will be possible to ensure that no member of the *Hiwot Nemariam* class receives double compensation through the Claims Commission.

Ethiopia's Procedural Demands

24. In its May 1, 2001, submission to the Claims Commission, Ethiopia has recommended procedural rules that would severely exacerbate the challenges faced by Eritrea in representing this enormous class of individuals. First, Ethiopia alleges that the Agreement does not provide the Commission with the power to enforce discovery orders or indeed to issue any interim orders. Further, because, in Ethiopia's view, there should be no need for discovery, Ethiopia also is insisting that all parties should be required to submit all supporting evidence by the December 1, 2001, deadline. *See* Ethiopia's May 1 Submission at ¶¶ 3.19 to 3.21.

25. If, as Ethiopia argues, the Commission lacks discovery powers, Eritrea will face great difficulty in presenting many claims. Ethiopia systematically confiscated documents relating to the claims of numerous persons of Eritrean citizenship or national origin. Accordingly, Ethiopia has sole custody and control over documentation that is crucial to the claims of these expellees and deportees. If Eritrea is unable to compel production of such documents, it will be at a tremendous disadvantage in bringing these claims.

26. Second, Article 5, Paragraph 8 of the Agreement states that, "[a]ll claims submitted to the Commission shall be filed no later than one year from the effective date of this Agreement." Ethiopia asserts that this December 12, 2001 deadline for filing claims should be strictly enforced. *See* Ethiopia's May 1 Submission at ¶ 2.3.

27. Ethiopia asserts that all of these determinations must be made prior to the December 12, 2001, deadline, and that all claims and supporting evidence must be submitted by this deadline. As Eritrea appears to have many times the number of potential claims as Ethiopia, these positions disadvantage Eritrea significantly and will only increase the likelihood that many Eritrean claims will never be heard.

Eritrea Has Limited Resources

28. Eritrea, as one of the world's poorest countries has severely limited resources to devote to the Claims Commission. Although O. Thomas Johnson, a member of the firm Covington & Burling, has assisted and will continue to assist Eritrea with its presentations before the Boundary

Commission and the Claims Commission, Covington & Burling will not be preparing claims to be presented before the Claims Commission for the simple reason that the firm is charging market law firm rates, and Eritrea cannot afford to hire the firm to play an extensive role in this process.

29. Accordingly, the enormous task of representing 150,000 to one million claimants before the Claims Commission will fall to my deputy, Megan Munzert and me. As I am also Co-Agent for the State of Eritrea before the Border Commission, the time that I can spend on the Claims Commission is very severely limited.

30. Further, I must return to Yale Law School in August 2001. I will spend as much time as possible on the Claims Commission cases, but will need, of course, to devote significant time to my teaching responsibilities. In addition, I will retain my responsibilities with regards to the Border Commission.

31. The Office of the Legal Advisor currently has one full time researcher working in the office on the filing and processing of claims. We are hoping to hire approximately ten to fifteen entry-level Eritrean assistants and to train them to interview potential claimants. These individuals will not have a legal background, but rather will be chosen primarily for their language expertise. Financial support for these assistants has not yet been obtained. In addition, when it is possible, our office solicits volunteer assistants from American law schools. However, at this point, it is expected that there will be no other lawyers, Foreign Ministry

assistance or investigators devoted to the preparation of claims to be presented before the Claims Commission.

32. Further, Eritrea has not yet initiated any procedures by which to notify, identify or interview claimants who are residents or nationals of other states or otherwise are living outside of Eritrea or Ethiopia. Many people deported or expelled from Ethiopia resettled in the United States or elsewhere, rather than settling in Eritrea.

Individual Human Rights Claims Will Take Priority

33. Given the enormous number of fundamental human rights violations to be presented before the Claims Commission, while Eritrea intends to pursue all existing individual claims, claims of purely financial injuries, including the taking of property, will be given less emphasis.

34. Eritrea will award highest priority to the presentation of claims of victims of the conflict who are left with so few resources that they are unable to provide for their own sustenance and housing. Our immediate focus will be on individuals whose lives have been disrupted and whose physical security is currently in jeopardy. This includes people living in occupied territories whose lives have been devastated by the war, as well as deportees and expellees.

35. Approximately one million people are currently homeless and in great distress in Eritrea, including those whose homes have been looted or bombed and people living in agricultural areas who are unable to plant crops. Most of these individuals currently reside in temporary camps created

for IDPs while they wait for the security situation to stabilize so that they may return to their farms and villages. Eritrea will prioritize the provision of homes and sustenance to these people whose needs are extremely urgent.

36. Eritrea also will give high priority to the claims of thousands of victims of rape, sexual assault and other forms of physical abuse. In particular, Eritrean women and young girls who have been impregnated by their rapists and/or suffer from venereal disease because of rape require urgent remedies including medical attention for themselves and their babies.

37. Thus, while Eritrea will do its utmost to present all valid claims to the Claims Commission, the *Hiwot Nemariam* lawsuit on behalf of a subset of the cases that Eritrea will present, enables us to devote more of our attention to the many other pressing claims that we have before us.

38. Moreover, the *Hiwot Nemariam* case could be of great assistance to the Claims Commission by finding facts relevant to the claims presented before the Commission. Further, it also increases the incentive for Ethiopia to provide full and rapid compensation for such claims, which is likely to be more appealing to Ethiopia than a high-profile lawsuit that would scrutinize and publicize its numerous human rights violations.

39. Eritrea welcomes the opportunity to have an international law firm with the skills and resources of Debevoise & Plimpton representing a subset of possible claims. It is Eritrea's official position that the *Hiwot Nemariam* case is important and should proceed.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: June 7, 2001
Asmara, Eritrea

/s/
Roberta (Lea) Brilmayer
Legal Advisor to the Office of the President
State of Eritrea

[OMITTED Exhibit 1: Ethiopia's May 1, 2001, Submission to the Claims Commission.]